



# PUBLIC NOTICE

**Federal Communications Commission**  
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**Washington, D.C. 20554**

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**DA 04-1995**  
**Released: June 29, 2004**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF CERTAIN ASSETS OF ACC TELECOMMUNICATIONS, LLC TO TELCOVE, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 04-230**

**Comments Due: July 13, 2004**

**Reply Comments Due: July 20, 2004**

On May 14, 2004, ACC Telecommunications, LLC (Debtor-in-Possession) ("ACC") and TelCove, Inc.<sup>1</sup> ("TelCove") filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>2</sup> requesting approval to transfer control of certain assets of ACC to TelCove.<sup>3</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(ii) of the Commission's rules because (1) the proposed transaction would result in TelCove having a market share in the interstate, interexchange market of less than 10 percent; (2) the applicants would provide competitive telephone exchange services or exchange access service (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) the ACC assets

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<sup>1</sup> In April 2004, this applicant changed its name from "Adelphia Business Solutions, Inc." to "TelCove, Inc." Applicants state that TelCove is in the process of changing the names of various TelCove subsidiaries by replacing "Adelphia Business Solutions" with "TelCove" in each name.

<sup>2</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>3</sup> Applicants have also filed a transfer of control application related to international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related pending applications.

being acquired are being used and will be used to provide services regulated as non-dominant and do not overlap with any area where TelCove affiliates may be dominant.<sup>4</sup>

ACC and its subsidiary ACC Telecommunications of Virginia, LLC (“ACC-VA”) provide competitive local and long distance voice and dedicated data services to business customers in, particular to this application, Buffalo, NY; Richmond, VA; Charlottesville, VA; and Shenandoah Valley, VA. ACC and ACC-VA are, in turn, owned by Adelphia Communications Corporation, the fifth-largest cable company in the United States, providing cable entertainment, high-speed Internet access, and residential long distance telephone services.

TelCove is a facilities-based provider of integrated communications services, serving medium and large business and other large users. Through subsidiaries, TelCove offers local and long-distance voice, dedicated data, ATM, frame relay, and Internet services in 35 markets throughout the eastern United States, the Gulf Coast area, and the Midwest. TelCove is 18% owned by Bay Harbour Partners, Ltd., a Cayman Islands investment firm. TelCove is also 16% owned by Bay Harbour 90-1, Ltd., a U.S. investment firm. Bay Harbour Management, L.C. holds four of seven seats in the TelCove board of directors and thus, applicants state, could be deemed to exercise control over TelCove.<sup>5</sup> Goldman Sachs, a U.S. investment firm, holds 15% of TelCove. Applicants believe that Goldman Sachs has attributable interests in several telecommunications companies, including some small incumbent LECs, but that none of those incumbent LECs operate in the areas where the ACC assets to be acquired are located.<sup>6</sup>

By this transaction, TelCove will acquire the physical assets and customer bases of ACC and ACC-VA in four markets: assets in Buffalo, NY will be transferred to TelCove Operations, Inc. (a wholly-owned subsidiary of TelCove)<sup>7</sup>; assets in three Virginia markets – Richmond, Charlottesville, and Shenandoah Valley – will be transferred to TelCove of Virginia, LLC (also a wholly-owned subsidiary of TelCove).

The applicants assert that grant of this application is in the public interest because it will foster facilities-based competition in the relevant markets. The transfer of assets and customers will facilitate TelCove’s emergence from bankruptcy by settling certain claims between TelCove and ACC, thus allowing TelCove to continue to offer competitive facilities-based services. Applicants state that the transaction will be transparent to end user customers, who will not experience a reduction of service.

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<sup>4</sup> See Letter from Timothy J. Cooney, Counsel to TelCove, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-230 (filed June 25, 2004) (June 25 Letter).

<sup>5</sup> Applicants state that Bay Harbour entities manage, but do not own, several funds that cumulatively own 50.16% of TelCove. See June 25 Letter.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

## **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before July 13, 2004** and **reply comments on or before July 20, 2004**.<sup>8</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31<sup>st</sup> day after the date of this notice.<sup>9</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>8</sup> See 47 C.F.R. § 63.03(a).

<sup>9</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

**In addition, one copy of each pleading must be sent to each of the following:**

the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [www.bcpweb.com](http://www.bcpweb.com); phone: 202-488-5300 fax: 202-488-5563;

- (1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (2) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: [julie.veach@fcc.gov](mailto:julie.veach@fcc.gov);
- (3) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: [chris.killion@fcc.gov](mailto:chris.killion@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson, at (202) 418-1394, or Julie Veach at (202) 418-1558.

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